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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~574~~. ~~343~~ 48

RUFUS WAPLES, PLAINTIFF IN ERROR,

vs.

MRS. ELIZABETH C. HAYS, NATURAL TUTRIX OF HER MINOR CHILDREN, JOHN HAYS, LUCY HAYS, KATE HAYS, AND MINERVA HAYS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 10, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 574.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

MRS. E. C. HAYS, TUTRIX,
versus
RUFUS WAPLES. } No. 8466.

TRANSCRIPT FROM THE FIFTH DISTRICT COURT, PARISH OF ORLEANS.—FILED APRIL 22D, 1878.

STATE OF LOUISIANA,
Fifth district court for the parish of Orleans:

MRS. E. C. HAYS, TUTRIX,
vs.
RUFUS WAPLES. } No. 8763.

Petition.—Filed 13th Dec'r, 1877.

To the honorable Walter H. Rogers, judge of the fifth district court for the parish of Orleans.

The petition of Elizabeth C. Hays, of this city, widow of the late Henry T. Hays, and as the duly qualified natural tutrix of her minor children, hereinafter named, respectfully represents:

2 That her said husband, the said Harry T. Hays, departed this life in the city of New Orleans on the 21st day of August, 1876, leaving the following named minor children, the lawful issue of his marriage with your petitioner, to wit: John Hays, Lucy Hays, Kate Hays, and Minerva Hays, who are the only heirs of said Harry T. Hays.

That in due course of law your petitioner qualified before the second district court for this parish as the natural tutrix of the said minor children of her said deceased husband and herself, which will fully appear from the certified copy of that portion of the record in the succession of her said husband, showing her qualification as said tutrix, marked Exhibit A, and annexed as a part of the petition.

That her said husband, up to the 3d day of March, 1865, was the owner of three certain lots of ground, with all the buildings thereon, purchased by him from David Hadden, by act of sale before Poole, notary, on the 3d day of May, 1854, for the sum of $10,000, which

3 said lots and purchase of the same are more specifically set forth in the said act of sale, a certified copy of which, marked Exhibit R, is annexed and made part hereof.

Petitioner further represents that on the 7th day of August, 1863, under act of Congress passed July 17th, 1862, the United States brought a suit in rem in the United States district court for the district of Louisi', entitled "The United States vs. Three lots of ground, the property of Harry T. Hays," being No. 7650 of the docket of said court. That the object of said suit was to have the said three lots and buildings thereon and interest of said Hays in the same declared forfeited and confiscated to the United States as enemy's property. That the object of said suit was attained.

That on the 18th day of January, 1865, a judgment in said suit was rendered in favor of the United States, decreeing said three lots and the buildings thereon, and all the interest of said Harry T. Hays thereon, forfeited and confiscated to the United States.

4 That on the 23d day of January, 1865, a writ of venditioni

exponas, issued under said judgment, commanding the United States marshal to sell the said three lots of ground and buildings thereon, etc., at public auction to the highest bidder.

All of which will more fully appear from the libel filed in said suit and the said writ of venditioni exponas, certified copies of which, marked respectively X and Y, are annexed and made part hereof.

That said marshal, in virtue of said writ, did sell at public auction to the highest bidder, the whole of said three lots, and buildings, &c., thereon, on Friday the 3d day of March, 1865.

That Rufus Waples, of this city, being the highest bidder at said public sale, having bid the sum of ($6,000) six thousand dollars, the said three lots, &c., were accordingly adjudicated to him, and he thereby became the owner of all the right and interests in said three lots, &c., which were under said act of Congress conveyed to him by said sale and adjudication.

5 That said $6,000, the price paid by said Waples under said adjudication, were delivered by the marshal to the clerk of said court for the use and benefit of the United States, which will more fully appear from the return of the marshal on said writ and the receipt of said clerk, a certified copy of which, marked D, is hereto annexed and made part hereof.

That immediately thereafter said Waples was put in possession of said 3 lots and buildings thereon and has ever since had the occupation, use and enjoyment of the same.

Petitioner avers that said Waples by the said adjudication and sale to him of said three lots, buildings &c., acquired on by the occupation, use, and enjoyment of the same for and during the natural life of said Harry T. Hays.

That at the death of said Hays all of the right and tittle and interest which said Waples acquired in and to said three (3) lots and buildings or to the use and enjoyment of the same by virtue of said adjudication irrevocably determined and ceased, and that the occupation and

6 use of said 3 lots and buildings by said Waples since the death of said Harry T. Hays have been without the color or right or law, and that of a mere trespasser.

That at the death of said Harry T. Hays the said minor children became the absolute owners in fee simple of said 3 lots and buildings free from all liens and encumbrances.

That from the moment of said death the said children have had the absolute and exclusive right to the possession, use, and enjoyment of said 3 lots and buildings, and are entitled to recover from said Waples a fair and reasonable compensation for his use and enjoyment of said property since the death of said Harry T. Hays.

That the sum of ($1250) twelve hundred and fifty dollars is a fair and reasonable compensation for the use and enjoyment of said property by said Waples since the moment of said death, and that he justly owes petitioner in her capacity as tutrix aforesaid that sum.

7 Wherefore the premises considered your petitioner, in her capacity of natural tutrix of her said children, prays that said Waples be cited to appear and answer hereto, and, after due proceedings, that a judgment be rendered, recognizing and decreeing the said minor children to be absolute owners of said three lots of ground and buildings thereon, free from all liens and encumbrances created by convention; that said Waples be ordered to deliver up to petitioner, as the tutrix of the said minor children, the possession of said 3 lots and buildings, and that petitioner, in her said capacity as tutrix, have judgment against said

Waples for the said sum of $1250, with legal interest thereon from judicial demand.

And for costs and general relief.

(Signed) PERCY ROBERTS and
" SINGLETON & BROWNE,
Att'ys for Pl'ff.

Citation.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

MRS. E. C. HAYS
vs. } No. 8763.
8 RUFUS WAPLES.

Mr. RUFUS WAPLES,
New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans within ten days after the service hereof.

Witness the honorable Walter H. Rogers, judge of the said court, this 13th day of December, in the year of our Lord 1877.

(Signed) JOHN J. HARMAN,
Deputy Clerk.

Sheriff's return to citation.

Received December 13th, 1877; and on the 17th day of same month and year served copy of the within citation and accompanying petition on Rufus Waples in person.

Returned same day.

(Signed) M. DRISCOLL,
D'y Sheriff.

9 *Answer.—Filed Dec'r 31st, 1877.*

STATE OF LOUISIANA,
Fifth district court for the parish of Orleans:

MRS. ELIZABETH C. HAYS
vs. } No. 8763.
RUFUS WAPLES.

Now into court comes the defendant, Rufus Waples, a citizen of the United States and of the State of Louisiana, and for answer says:

I. That he denies all the allegations of the plaintiff, except as hereinafter admitted.

II. That on or about August 7th, 1863, the United States of America instituted proceedings in rem in the district court of the United States for the eastern district of Louisiana, numbered 7650 of the docket of said court, and filed a libel o nformation therein, and alleged—

That by virtue of an act of Congress entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate
10 the property of rebels, and for other purposes," approved July 17th, 1862, the marshal of the United States for said district had previously seized as forfeited to the United States, as enemy property,

three certain lots of ground in the fourth district of the city of New Orleans, designated by the numbers 25, 26, and 27, square hereafter named on a plan by B. Buisson, dated 18th June, 1852, and deposited in the office of Jean Agaisse, a notary of said city, said lots being located in the square bounded by Chestnut, Camp, First, and Philip streets, and adjoining each other, and they measure each thirty feet front on Chestnut street between Philip and First streets, by a depth between parallel lines of one hundred and fifty-nine feet eleven inches and ten lines, together with all the buildings and improvements thereon, and said United States declared said property to be enemy's property by reason of its ownership and other reasons, and prayed for its condemnation as such, and duly caused process of monitionto issue, and "all persons having or pretending to have any right, title, or interest"
11 in or to said property were duly called upon to come forward and assert their claims.

III. That in response to said monition, and by virtue of an act of Congress of the United States entitled "An act to protect liens upon vessels in certain and for other purposes," approved March 3, 1863, E. A. Bradford intervened between the libellants and the thing libelled, and instituted in said cause his hypothecary action against the property libelled, and he fully described said property as above, and alleged, and to the truth was, that it has been specially mortgaged and hypothecated on July 3d, 1860, by Harry T. Hays, whom he alleged to have been then the owner thereof, to secure payment to any holder and owner of a certain promissory note for six thousand dollars ($6,000), drawn by said Harry T. Hays to his own order, and by him endorsed, dated of even date with said mortgage act July 3d, 1860, payable two years from date, bear-
12 ing interest at 8 p'r c't. from maturity, identified with said act of mortgage executed before A. Commandeur, notary public, in this city of New Orleans, and signed and delivered before said notary, all on said day, for value received by said drawer; that said act was made part of said Bradford's petition of intervention and claim and was attached thereto; that said H. T. Hays in said authentic act had confessed judgment in favor of Thos. G. Morgan, or any holder of said note, and fully bound said property for the payment thereof; that he, Bradford, was the lawful holder and owner of said note; that he had by law a special lien and privilege upon said property prior and superior to that of the United States, and he prayed for judgment accordingly, and that said property might be sold and the proceeds applied to the payment of his claim, and for general relief.

Now, your respondent avers that said United States excepted to said intervention and put at issue said Bradford's right to appear by
13 virtue of said act of Congress of March 3d, 1863, but said exception was overruled and decided adversely to the said exceptor; and the said United States defending against said hypothecary action of said Bradford set out the entire act of March 3d, 1863, aforesaid, and denied all the allegations of said intervenor, and fully put his claim at issue.

IV. Further answering, your respondent says that on or about the 18th day of January, 1865, after said exception had been overruled, and while said claim of the said intervenor was at issue, the said court, in due and regular course of procedure, in open session, at a term begun and held according to law, ordered, adjudged, and decreed that all of said property named and described in said libel be condemned and forfeited to the said United States, and that said property be sold, and the

proceeds thereof distributed according to law, which said judgment was afterwards duly signed by said court.

14 That by said judgment, which is not reviewable, and cannot be attacked in any collateral action, the United States became vested with a complete and absolute title to said property, free from all claims of all persons except the mortgage claim of the intervenor Bradford, and the claims of the State of Louisiana and of the city of New Orleans, who had intervened upon tax liens, all of said intervenors having duly appeared in response to the monition inviting them so to do, and who had therefore not been in default, and whose liens and privileges rested upon said property and followed it into whosoever hands it might pass, and said mortgage of said Bradford remained by force of law, both of Louisiana and of the United States, still upon said property, after said property had become vested in the United States, free from all claims, excepting those pending.

5. That judgment in favor of E. A. Bradford was rendered on or about the 23d day of February, 1865, by said court, in accordance with his

15 prayer in open court in lawful session, after the hearing of the pleadings, evidence, and arguments, by which it was ordered, adjudged, and decreed that there be judgment in favor of the intervenor, E. A. Bradford, for the sum of six thousand dollars ($6,000), with interest, attorney's fee, &c., with special mortgage upon the three lots of ground, with all the buildings and improvements thereon, designated as lots Nos. 25, 26, and 27 of square bounded by Chestnut, Camp, First, and Philip streets, more fully described in the libel and act of mortgage on file; and it was further "ordered that the intervention of George Cook being an ordinary claim, without any lien upon the libeled property, be rejected with costs," and "that the taxes due the State of Louisiana and the city of New Orleans be paid out of the proceeds, and that the costs and charges be taxed according to law, the intervenor, Bradford, paying his share of the same."

That said judgment in favor of said Bradford for six thousand

16 dollars, decreeing special mortgage on said property after it had passed to a third person as owner, to wit, to said United States, was duly signed by said court on the 28th day of February, A. D. 1865, and became final and is not reviewable, nor can it be attacked in any collateral action; which said judgment against said property of the United States and against said United States, by virtue of said statute of Congress fully authorizing said Bradford to sue, will be produced on the trial hereof, or a duly certified copy thereof.

6th. That sale of said property in accordance with the prayer of said Bradford was made on or about the 3d day of March, 1865, by the marshal of said district after due advertisement, fully describing said three lots with buildings, &c., thereon, at public auction and in accordance with law in all things, pursuant to a writ of a sale which the United States had caused to be issued by order of said court, rendering it unnecessary for said court to issue a second writ while said first

17 writ was in full force and virtue, and substantially in accordance with the prayer of said intervenor Bradford.

That your respondent was the last and highest bidder at said sale of said lots with the improvements thereon, which were adjudicated to him for the sum of $6,000, which he paid in lawful money to said marshal, who paid the same to the clerk of said court, to be disposed of as said court might direct, as appears by the marshal's return to said writ.

That a deed of sale duly executed by said marshal by virtue of the laws in such case made and provided and under the authority of the

acts of Congress of August 6th, 1861, July 17th, 1862, and March 3d, 1863 which he cited in said deed (the titles of the last two being quoted herein), was made and delivered by said marshal to this defendant on the 16th day of March, 1865, and said defendant accepted the same, evidencing said sale and adjudication to said defendant, and granting and conveying all the said lands, premises, and property in full, absolute, com-
18 plete, and unemcumbered title to him, his heirs, administrators, and assigns, to have and to hold to his and their proper use, benefit, and behoof forever.

That said title was duly recorded in the office of the clerk of said court on March 17, 1865, and in the office of the register of conveyances for the parish of Orleans, La., on June 20th, 1865, and that said act or a duly certified copy will be produced on the trial thereof, and that said defendant became possessed and seized of all said lands and property.

7. Your respondent further answers that by judgment of said court duly rendered on the 27th March, 1865, all said proceeds of sale were paid to said Bradford, to satisfy the judgment previously rendered in his favor as aforesaid (after the payment of the costs of said suit and said taxes), which sum so paid to said Bradford amounted to four thousand nine hundred and eighty-six $\frac{93}{100}$ dollars, and that the said marshal having exhausted the said property in the enforcement of said hypothecation, caused the cancellation and erasure of said mortgage, which was
19 done by the recorder of mortgages, as required by law in such case, and that said sale was by said court in substance and effect ratified and confirmed by said judgment of distribution.

Wherefore, all the premises considered, defendant prays for judgment in his favor, and against the plaintiff and said minors, and for costs and all general and equitable relief.

And as in duty bound, &c.,

(Signed) RUFUS WAPLES.

Petition for removal.—Filed, 31st Dec'r, 1878.

STATE OF LOUISIANA,

Fifth district court for the parish of Orleans:

MRS. ELIZA. C. HAYS, TUTRIX, &C., }
vs. }
RUFUS WAPLES. }

To the honorable the judge of the fifth district court for the parish of Orleans.

The petition of Rufus Waples, defendant in the above entitled case, respectfully represents:

That said case is a suit of a civil nature at law; that the matter
20 in dispute exceeds, exclusive of costs, the value of five hundred dollars, said suit arising under the Constitution of the United States and the laws of the United States, particularly the act of Congress entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved July 17, 1862, and the act entitled "An act to protect liens upon vessels in certain cases, and for other purposes," approved March 3d, 1863, and that the said suit involves the title to real estate sold by the United States marshal, under judgments rendered by a court of the United States, and involves Federal questions.

And on further suggesting that said defendant desires to remove this

suit from said fifth district court for said parish, which is a State court, to the circuit court of the United States for the fifth circuit, to be held in the district of Louisiana on the fourth Monday of April next, and that he herewith files a bond with good and sufficient security for his entering in such circuit on the first day of its next session a copy of the
21 record in this suit, and for paying all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto.

Wherefore he prays, said premises and bond considered, that an order be granted transferring the above entitled cause to the circuit court of the United States for the fifth circuit, to be held in the district of Louisiana on the fourth Monday of April next, 1878.

And as in duty bound, &c.,

(Signed) RUFUS WAPLES,
Defendant.

Order.

Let this cause be removed to the United States circuit court for the district of Louisiana, upon petitioner furnishing bond with good and solvent security conditioned according to law.

New Orleans, Dec'r 31st, 1878.

(Signed) W. H. ROGERS, *Judge.*

22 *Bond for removal.—Filed 31st December*, 1877.

STATE OF LOUISIANA,
Fifth district court for the parish of Orleans:

MRS. ELIZA. C. HAYS
vs. } 8763.
RUFUS WAPLES.

Know all men by these presents that we, Rufus Waples as principal and Joseph S. Copes as surety, are held and firmly bound unto Mrs. Elizabeth C. Hays, tutrix of the minors, John, Lucy, Kate, and Minerva Hays, we, our heirs, administrators, and assigns, in the full sum of one hundred dollars, lawful money of the United States:

Now, the condition of the above obligation is that whereas said Rufus Waples has this day applied for the transfer of the suit entitled Mrs. Elizabeth C. Hays, tutrix, &c., vs. Rufus Waples, No. 8763 of the docket of the fifth district court for the parish of Orleans, from said State
23 court to the circuit court of the United States for the fifth circuit to be holden in the district of Louisiana on the fou th Monday of April next, if said defendant shall enter a copy of the record in said suit on the first day of the next session of said circuit court; if said circuit court shall hold that such suit was wrongfully or improperly removed thereto, then the said obligation to be null and void, but otherwise to remain with full force and virtue. Signed this 31st December, 1877.

RUFUS WAPLES,
Principal.

(Signed) J. S. COPES,
Surety.

Attest:
(Signed) JOS. G. KAISER.

Clerk's certificate.

Fifth district court, parish of Orleans.

I, Thomas Duffy, clerk of the fifth district court for the parish of Orleans, do hereby certify that the foregoing twenty-eight pages do contain a true and complete record of all proceedings had and documents and pleadings filed wherein Mrs. Elizabeth C. Hays, tutrix, &c., is
24 plaintiff and Rufus Waples is defendant and numbered 8763 of the docket of this court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 31st day of January, in the year of our Lord 1878 and the 102d year of the Independence of the United States of America.

[SEAL.] (Signed) THOMAS DUFFY,
Clerk.

Judge's certificate.

Fifth district court, parish of Orleans.

I, Walter H. Rogers, sole judge of the fifth district court for the parish of Orleans, do hereby certify that Thomas Duffy is the clerk of said court; that the same is a court of record, and that the signature Thomas Duffy, clerk, to the foregoing certificate is in the proper handwriting of him the said Thomas Duffy, clerk; to his official acts as such full faith and credit are due and owing. And I do further certify
25 that his attestation is in due form of law.

Given under my hand at the city of New Orleans, on the 31st day of January, in the year of our Lord one thousand eight hundred seventy-eight.

(Signed) W. H. ROGERS, *Judge.*

Clerk's certificate.

Fifth district court for the parish of Orleans.

I, Thomas, Duffy, clerk of the fifth district court for the parish of Orleans, do hereby certify that W. H. Rogers, whose genuine signature to the foregoing certificate, is now and was at the time of signing the same sole judge of the fifth district court for the parish of Orleans, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 31st day of January in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] (Signed) THOMAS DUFFY,
Clerk.

26 PROCEEDINGS IN THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF LA.

Supplemental answer.—Filed April 22d, 1878.

United States circuit court, 5th circuit, district of Louisiana.

MRS. ELIZABETH C. HAYS, TUTRIX, &C., }
vs. }
RUFUS WAPLES. }

The supplemental answer and prayer of the defendant, filed herein by leave of court, respectfully shows:

That, the allegations of the original answer considered, he prays that in case the property claimed by the plaintiffs should be adjudged to

them they may be condemned to pay to him prior to their recovery of said property the sum of six thousand dollars, with legal interest from the third day of March, 1865, but he prays that said property may not be adjudged to them, but to this defendant, and that his title
27 thereto be confirmed, and he prays as in his original answer he has already prayed.

(Signed) RUFUS WAPLES, *P. P.*

Exceptions.—Filed April 22d, 1878.

United States circuit court, fifth circuit, district of Louisiana.

MRS. ELIZABETH C. HAYS, TUTRIX, &C., *vs.* RUFUS WAPLES.

Now comes the defendant and pleads these his peremptory exceptions founded upon law:

1. That the plaintiffs aver in their petition that he paid six thousand dollars for the property which they now claim, and the return made by the marshal, and the judgment of distribution in the case of United States vs. 3 lots, &c., the property of H. T. Hays in the U. S. district court, referred, to in the answer, show that said money was applied to the payment of a mortgage debt due upon said property, and owing by Harry T. Hays, and of tax liens on said property and court costs,
28 all owing by said Hays, and so the truth is; and said plaintiffs have not reimbursed said defendant in said sum of $6,000, nor in any sum, nor have they made tender thereof to him, wherefore he prays that the plaintiff's action be dismissed with costs.

I. That true it is the defendant acquired said property on or about the 3d of March, 1865, as the plaintiffs aver, and on the 16th of same month received title therefor; that he acquired in good faith by a just title legal and translative of property, valid in form certain, which said property has been held in continuous possession under said title, without interruption, peaceably, publicly, and unequivocably, from said 16th March, 1865, to this time, a period of more than ten years; wherefore he pleads the prescription of ten years and prays that he be maintained in his possession and title, and that the plaintiff's petition be dismissed with costs, and he prays for general relief.

(Signed) RUFUS WAPLES, *In pro per.*

29 *Submission of exception.—Extract from the minutes, April term*, 1878.

NEW ORLEANS, *Saturday, May 11th*, 1878.

Court met pursuant to adjournment.

Present Hon, Edward C. Billings, district judge.

MRS. E. C. HAYS, TUTRIX, &C., *vs.* RUFUS WAPLES. 8466.

The exception herein came on to be heard, and having been argued by counsel, the court took time to consider.

Order on the exception.—Extract from the minutes of *May 23d*, 1878.

MRS. E. C. HAYS, TUTRIX, &C., *vs.* RUFUS WAPLES. } No. 8466.

On due consideration of this cause, for reasons orally assigned, it is ordered that the first ground of exception be overruled, and that the second ground be remitted to the merits of the case.

30 *Supplemental petition and order for sequestration.—Filed June 15th*, 1878.

U. S. circuit court.

MRS. E. C. HAYS, TUTRIX, *vs.* RUFUS WAPLES. } No. .

The amended and supplemental petition of Elizabeth C. Hays, tutrix, filed by permission of the court, respectfully represents:

That Rufus Waples, the defendant herein, has for the past seven years neglected and refused to pay any of the State and municipal taxes assessed on the real estate and improvements thereon, fully described in her original petition herein, the same being the property of her minor children, and now wrongfully in the possession of the said Waples.

That for five or six years past he has failed and refused to make the repairs on the buildings, fences, and grounds embraced in said property, actually necessary for their preservation, and in consequence thereof that the said property has seriously deteriorated in value.

31 Petitioner further represents that she has good ground to apprehend, and does apprehend, that the said Waples may make use of his possession of said property to dilapidate and waste the revenues produced by said property or convert them to his own use.

Wherefore petitioner prays that a copy of this supplemental petition be served on said Waples, and 'sidering the affidavit annexed, and on giving bond according to law, and in such sum as the court may require, that a writ of sequestration issue herein commanding the marshal to take the said real estate and improvements thereon into his possession, and likewise all fruits and revenues produced by said property, and hold the same subject to the further order of this court; and after due proceedings petitioner prays for judgment, as asked in her original petition, and for costs and general relief.

(Signed) PERCY ROBERTS.
(Do.) SINGLETON & BROWNE.

Personally appeared before the undersigned, Elizabeth C.
32 Hays, tutrix pl'ff in the foregoing petition, who, being duly sworn, says that all of the allegations set forth in said petition are true.

(Signed) ELIZABETH C. HAYS, *Tutrix.*

Sworn to and subscribed before me this 12th day of June, 1878.

[SEAL.] (Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

Order.

Let the writ of sequestration issue as herein prayed for, on pl'ff executing a bond with good and solvent surety as the law directs, in the sum of five thousand dollars.

June 15, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Received June 15th, 1878, by the U. S. marshal, and on the 17th day of June, 1878, served a true copy hereof on Rufus Waples, by handing the same to him in person in the city of New Orleans.

(Signed) W. G. ELLIOTT,
D'y Marshal.

33 *Bond for sequestration.—Filed June 15th, 1878.*

Know all men by these presents, that we, Elizabeth C. Hays, tutrix, as principal, and John J. Gidiere as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto F. A. Woolfley, clerk United States circuit court, district of Louisiana, in the sum of five thousand dollars, lawful money of the United States of America, for which payment well and truly to be made to the said clerk or his successors we bind ourselves in solido and each of our executors, administrators, heirs and assigns firmly by these presents. Sealed with our seals and dated the 15th day of June, 1878.

Whereas the said Elizabeth C. Hays has this day presented a petition to said circuit court, district of Louisiana, praying a writ of sequestration to issue:

Now the condition of the above obligation is that we, the above bound principal and surety, will well and truly pay to the said clerk or his successors in office, for the benefit of any and all persons in-
34 terested in said suit, all such damages as may be recovered against us in case it should be decided that said writ was wrongfully obtained.

(Signed) ELIZABETH C. HAYS. [L. S.]
(Do.) JNO. J. GIDIERE. [L. S.]

Signed, sealed, and delivered in the presence of—
(S'g'd) D. J. DOWERS.

Writ of sequestration.—Issued June 15th, 1879.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

MRS. E. C. HAYS, TUTRIX, *vs.* RUFUS WAPLES. } No. 8466.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded to sequester and take into your possession according to law the following described real estate, to wit: Three lots of ground, with the buildings and improvements thereon, situate in the fourth district of this city, in the square bounded by Chest-

35 nut, Camp, First and Philip streets, designated as lots Nos. 25, 26, and 27, on a plan drawn by B. Buisson on the 18th June, 1852, and deposited in the office of J. Agaisse, notary. Said lots adjoin each other, and measure each 30 feet front on Chestnut street between Philip and First streets, by 159 feet 11 inches and 10 lines in depth between parallel lines, and are now occupied by Rufus Waples.

And likewise all fruits and revenues produced by said property, and hold the same subject to the further order of said court.

And of what you may do in the premises make due return to our said court.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at New Orleans this 15th day of June, 1878.

(Signed) F. B. VINOT,
D'y Clk.

Marshal's return.

Received June 15th, 1878, by the U. S. marshal, and on the
36 15th day of June, 1878, sequestered and took into my possession the within described property, and placed keeper thereon, and on the same day recorded seizure in recorder's office, parish of Orleans, La., and on the 17th day of June, 1878, served a notice of seizure, as per notice hereto attached and made part of this return, on Rufus Waples in person, and on the 21st day of June, 1878, ordered by att'ys Singleton & Browne and Percy Roberts to release keeper, as per order hereto attached.

July 25th, '78.

(Signed) C. R. STEELE,
D'y Marshal.

Notice of seizure attached to marshal's return.

Circuit court of the U. S.

OFFICE OF U. S. MARSHAL,
District of La., New Orleans, June 17th, 1878.

MRS. E. C. HAYS, TUTRIX, &c., *vs.* RUFUS WAPLES. } No. 8466.

RUFUS WAPLES, Esq.:

SIR: You are requested to vacate the premises now occupied by you, and which is sequestered herein, within five days from the service hereof.

37 Should you wish to continue in the occupation of the property as a tenant of the U. S. marshal at a stipulated rental, you will please make such wish known to me within three days from the service hereof.

Very respectfully, &c.,

EDW. S. WURZBURGER,
D'y Marshal.

Issued by the U. S. marshal, June 17th, 1878, and on the 18th day of June, 1878, I served a true copy of this notice on the within-named

Rufus Waples by leaving the same at his domicil, No. 116 Chestnut street, in the hands of Mrs. K. B. Alsworth, whom I found living and residing at said domicil, the said Rufus Waples being absent at the time of service; all of which facts I ascertained by interrogating the said Mrs. K. B. Alsworth.

(Signed) E. S. CURRY,
D'y Marshal.

NEW ORLEANS, *June* 18, '78.

38 *Order from pl'ff's attorneys attached to marshal's return.*

SINGLETON & BROWNE, ATT'YS AT LAW,
New Orleans, La., June 21st, 1878.

Col. JACK WHARTON,
U. S. Marshal:

Please release keeper in Hays ex'x vs. Waples, a receiver having been appointed, and oblige,

Very truly yours,

SINGLETON & BROWNE.
PERCY ROBERTS.

Rule to quash writ of sequestration.—Filed June 18th, 1878.

United States circuit court, 5th circuit, district of Louisiana.

MRS. E. C. HAYS, TUTRIX,
vs.
RUFUS WAPLES. } No. 8466.

On motion of Hornor & Benedict, attorneys for defendant, and on suggesting—

That the writ of sequestration issued in this case is wrongfully
39 issued, for that the bond does not set forth that title of the suit in which said writ is obtained, nor that the defendant is either directly or indirectly the obligee in said bond, and that said bond is not written and conditioned as required by law with good and solvent security.

That the affidavit is insufficient and that the affiant merely swears to the allegation of the supplemental petition, which contains no such allegation of ownership, in herself or in her unmarried minor children, of the property sequestered, as required by law, nor does she state the grounds for her apprehension that the defendant "may make use of his possession of said property to delapidate and waste the revenues produced by siad property or convert them to his own use." And said affidavit is untrue and a writ of sequestration will not lie in the premises.

That the allegations of the supplemental petition are not true in fact and are not such as to warrant the issuance of the harsh remedy resorted to.

That the principal on said bond is not authorized by the second
40 district court of New Orleans to enter into obligation so as to bind her minor children on said bond, and this defendant is entitled to have a bond with a principal legally bound, as well as the surety; that the names of said minors are not set forth in said bond, nor any authority to represent them stated in the stipulations.

That the bond should have been executed so as to bind the obligors to the defendant as well as to the clerk.

That for these reasons, and others appearing, it is ordered that plaintiff show cause on the 4th day of November, 1878, at 11 a. m., why the sequestration should not be set aside.

Marshal's return.

Received June 22d, 1878, by the U. S. marshal, and on the same day served a true copy of the foregoing rule on Singleton & Browne, esqs., by handing the same to C. B. Singleton, esq., in person in this city.

(Signed) J. WHARTON,
Dy Marshal.

41 *Note of evidence.—Filed January 30th*, 1879.

MRS. E. C. HAYS
vs.
RUFUS WAPLES.

Plaintiff offered act, A; certificate of death, B; letters tutorship, C; record 7650 U. S. district court.

Act A, offered by plaintiff, January 30th, 1879.

Sale.—David Hadden to Harry T. Hays.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

3D MAY, 1854.

Be it known that this day before me, William Laurens Poole, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Mr. David Hadden of this city, who declared that
42 for the consideration of the price and sum of ten thousand dollars paid and to be paid by Mr. Harry T. Hays, also of this city, as hereinafter set forth, and in confirmation of a sale at auction by J. A. Beard and May on the 22d of April last, whose process verbal of said sale is hereto annexed, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto the said Harry T. Hays, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof the following described property to wit: Three certain lots and a fraction of ground, with all the buildings and improvements thereon, rights, ways, privileges, servitudes, and appurtenances thereunto belonging or in any wise appertaining, situated in the faubourg Lafayette, fourth district of this city, in the square by Chestnut, First, Camp, and Philip streets,
43 and designated by the number twenty-five and twenty-seven on a plan drawn by B. Buisson on the 18th June, 1852, and deposited in the office of Juan Agaisse, a notary in this city. The said lots adjoin each other, and measure each thirty feet front on said Chestnut street between Philip and First streets, by one hundred and fifty-nine feet eleven inches and ten lines in depth between parallel lines, American measure, and the said fraction measures nine feet six inches and *and* three lines front on said Chestnut street, adjoining said lot No. twenty-seven

towards First street, by a depth the same as said lot, according to a surveyor's sketch by Blanchard, dated 27th January, 1853, and annexed to an act of sale passed in this office on the 4th of June, 1853, under which the present vendor acquired the whole of the property herein described, from J. B. Gribble, also of this city; upon all which property the entire taxes assessed by the city and State authorities for the past year have been fully paid, as appears by the respective receipts, exhibited by said vendor to me, notary, at this date.

44 To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof forever. And the said vendor, for himself and his heirs, the said property, &c., to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever by the' presents.

And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, or against all former vendors, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made and accepted for the consideration of the aforesaid price and sum of ten thousand dollars, in part payment and deduction whereof the said purchaser hath paid in ready money the sum of

45 twenty-five hundred dollars in acordance with the terms adjudicated at said sale, and for the balance of said price, to wit, the sum of seventy-five hundred dollars, the present purchaser hath furnished his two several promissory notes, dated this day, one for the sum of three thousand and ninety-six dollars, payable one year after date, and the other for the sum of thirty-seven hundred and fifty dollars, payable two years after date, both of them bearing interest at six per cent. per annum from date until maturity, and if not then paid at the rate of eight per centum per annum from date until final payment; and for the remaining six hundred and fifty-four dollars of said total price, the said purchaser puts himself in the place and stead of his vendor, and assumes, as he does hereby assume, to pay his acquittance a certain note drawn by J. B. Gribble to his own order and by himself endorsed, dated the 26th of October, 1852, payable twenty-four months after its date, with interest at six per centum per annum from its date to matu-

46 rity, and if not then paid at the rate of eight per cent. per annum thereafter until final payment, secured by special mortgage in favor of Adolphe D'Aquin upon the three lots of ground herein described by act before T. Guyol, notary, in this city, on the said 26th of October, 1852, the reversion of which mortgage having been assumed by the present vendor in his said purchase from said Grible, is now assumed by the present purchasser; which sum of $600 with said interest thereon to date ($54) with the notes and cash here above detailed comprise the total price and sum of the present sale. The said two notes for the sum of $3,096, and $3,750 each, respectively, having been duly paraphed by me, notary, in order to identify them with this act, were then, with said ready money, handed to said vendor, who hereby ackowledges the receipt thereof; and in order to secure the payment of said two notes for the said amounts, the whole property herein conveyed

47 remains specially mortgaged and hypothecated in favor of said vendor or any other holder or holders of said notes.

And said purchaser moreover binds and obligates himself to effect and continue insurance upon the buildings on said property, and transfer

the policy therefor in favor of his said vendor until the first of the above notes for the sum of $3,096 is fully paid.

Said property being now under to Wm. Freret, of this city, until the 1st of November next, at the rate of one thousand dollars per annum, the said rental is hereby transferred to the present purchaser, who will collect the same from the date thereof until the end of said term upon his own responsibility.

And by reference to the certificate from the recorder of mortgages in and for this city and parish, dated the 27th of April last, and hereto annexed it appears that the property herein conveyed is free from any incumbrance in the name of the present vendor in that office.

48 And now to these presents personally came and intervened Mistress Elizabeth La Honiore, of lawful age, wife of the said David Hadden, who declared unto me, notary, that it is her wish and intention to release in favor of the said purchaser, his heirs and assigns, the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said David Hadden or otherwise.

Whereupon I, the said notary, did inform the said Mistress Hadden, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage on the property of her said husband.

First. For the restitution of her dowery and of the reinvestment of the total property sold by her said husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly. For the restitution and reinvestment of the dotal prop-

49 erty *by* she acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected.

Thirdly. The nuptial presents.

Fourthly. For debts by her contracted with her said husband; and

Fifthly. For the amount of her paraphernal property alienated by her and received by her said husband or otherwise disposed of for the individual interests of her said husband.

And the said Mistress Hadden did thereupon declare unto me, notary, that she was fully aware of, and acquainted with, the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that, availing herself of the right secured to her by the second section of an act passed by the legislature of this State, authorizing wives to make valid renunciations, etc., approved on the twenty-seventh day of March, eighteen hundred and thirty-five, she nevertheless

50 did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said David Hadden, being now present, aiding and authorizing the said wife, in the execution of these presents, she, the said wife, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said purchaser, his heirs and assigns, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office at the city of New Orleans, in the presence of Allen Hill and Joseph B. Gribble, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together

with the said parties and me, the said notary, on this third day of
51 May, in the year of our Lord one thousand eight hundred and fifty-four.

(Original signed) A. DAUQUIN.
DAVID HADDEN.
HARRY T. HAYS.
E. HADDEN.

ALLEN HILL.
J. B. GRIBBLE.

WILLIAM S. POOLE,
Notary Public.

I, the undersigned custodian of notarial records for the parish of Orleans, State of Louisiana, hereby certify the foregoing to be a true copy of an original act passed before William L. Poole, a notary public, deceased, on the 3d day of May, 1854, which act is now in my possession as custodian aforesaid.

New Orleans, Dec. 15th, 1877.

(Signed) J. F. COFFEY,
Custodian of Notarial Records.

52 *Certificate of death, B, referred to in note of evidence, & offered by pl'ff January 30th*, 1879.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

Office of the recorder of births, marriages, and deaths.

Be it remembered that on this day, to wit, the twenty-first of August, in the year of our Lord one thousand eight hundred and seventy-six, and the one hundredth and first of the independence of the United States of America, before me, G. Casanave, duly commissioned and sworn recorder of births, marriages, and deaths in and for the city of New Orleans and parish of Orleans, personally appeared B. F. Tyree, a native of Natchez, Mississippi, residing at No. 271 Camp street in this city, who hereby declares that General Harry T. Hays, a native of Tennessee, aged fifty-eight years and four months, departed this life this day (August 21, 1876), at No. 72 Esplanade street, in this city. Conjugal condition, married; cause of death, Bright's disease; certificate of Dr. J. Dickson Bruns.

53 Thus done at New Orleans, in the presence of the aforesaid B. F. Tyree, as also in that of Messrs. Henry Colin and James Davis of this city, witnesses, by me requested so to be, who have hereunto set their hands together with me, after the reading hereof, the day, month, and year first above written.

(Signed) B. F. TYREE.
G. CASANAVE,
Recorder.

JAS. DAVIS.
H. COLIN.

I do certify the foregoing to be a true and faithful copy from the original, recorded in book marked No. 67, folio 18.

In testimony whereof I have set my hand and affixed the seal of my office, at the city of New Orleans, this eighth day of December, in the

year one thousand eight hundred and seventy-six, and the one hundredth and first of the Independence of the United States of America.

[SEAL.] (Signed) G. CASANAVE,
Recorder of Births, Marriages, and Deaths.

54 *Letters of tutorship, C, referred to in note of evidence offered by pl'ff January 30, 1879.*

Letters of tutorship, No. 39112. Succession of Gen'l Harry T. Hays.

STATE OF LOUISIANA,
Second District Court for the Parish of Orleans:

This shall certify to all whom it may concern that on the eighth day of December, in the year of our Lord one thousand eight hundred and seventy-six, an application was made to the honorable judge of second district court for the parish of Orleans, by Mrs. Elizabeth C. Hays, widow of Harry T. Hays, praying that she might be admitted to take her oath as natural tutrix of her minor children, John Hays, Lucy Hays, Kate Hays, and Minerva Hays.

Now, know ye that the said Mrs. Elizabeth C. Hays, widow of Harry T. Hays, has been confirmed as natural tutrix of her aforesaid
55 minor children, and 1 is on said oath as such, and has complied with all the other requisites of the law.

Witness our hands and the seal of the second district court this second day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] (Signed) A. L. TISSOT, *Judge.*
(Signed) FRANK PACE, JR., *Clerk.*

A true copy.
EUG. D'HERETÉ, *D'y Cl'k.*

56 *Record No. 7650 U. S. district court, La.—Offered by pl'ff January 30th, 1879.*

U. S. district court.

UNITED STATES
vs.
THREE LOTS OF GROUND, THE PROPERTY of Harry T. Hays. } No. 7650.

Libel of information.—Filed August 7th, 1863.

To the Hon. Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America against the "estate, property, money, stocks, credits, and effects" hereinafter described, and against all persons
57 intervening for their interest therein in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1st. That James Graham, esq., marshal of the United States for

the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney-General of the United States to the district attorneys thereof, and by virtue of the act of Congress, approved on the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and and rebellion, to sieze and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the twenty-first day of July, in the year of our Lord one thousand eight hundred and sixty-three, seized as forfeited to the said United States, at New Orleans, within said district, and within the jurisdiction of this court, a certain lot of ground with all the buildings and improvements thereon, rights, ways, privileges, &c., situate in the fauborg Lafayette, fourth district of the city of New Orleans, in the square bounded by Chestnut, Camp,
First, and Philip streets, and designated by the No. 27 on a plan
58 drawn by B. Buisson on the 18th June, 1852, and deposited in the office of Jean Agaisse, a notary of said city. The said lot adjoins lot No. 26, and measures 30 feet front on Chestnut street between First and Philip, by 159 feet 11 inches 10 lines in depth, between parallel lines, American measure: also a certain lot of ground with the buildings and improvements thereon, rights, ways, privileges, &c., situate in the fauborg Lafayette, fourth district of the city of New Orleans, in the square bounded by Chestnut, Camp, First, and Philip streets, designated by the No. 26, on a plan drawn by B. Buisson on the 18th of June, 1852, deposited in the office of Jean Agaisse, notary. Said lot measures 30 feet front on Chestnut street, between Philip and First streets, and adjoins lots Nos. 25 & 27, by 159 feet 11 inches 10 lines in depth, between parallel lines, and American measure. A lot of ground with all the buildings and improvements thereon, rights, ways, privileges, &c., situate in the faubourg Lafayette, fourth district of the city of New
59 Orleans, in the square bounded by Chestnut, Camp, Philip, and First streets, and designated by the No. 25 on a plan drawn by B. Buisson on the 18 June, 1852, and deposited in the office of Jean Agaisse, a notory of this city. The said lot adjoins lot No. 26, and measures 30 feet front on Chestnut street, between First and Philip, by 159 feet 11 inches 10 lines in depth, between parallel lines, American measure.

II. That the person who owns the said property, Harry T. Hays, whose domicil is in this city, is and was on the 17th day of July, 1862, and previously thereto had been the owner thereof.

III. That certain States forming a part of the territory, and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued, and bearing date the first day of July, A. D. eighteen hundred and sixty-two, are now engaged, and were at the time said proclamation was issued, engaged in armed rebellion against the lawful authority of the United States.

60 IV. That by the act of Congress of the United States, approved the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

V. That the said Harry T. Hays, the person who owns the property seized herein, subsequently to said seventeenth day of July, in the year

of our Lord one thousand eight hundred and sixty-two, did act as an officer of the army or navy of the rebels in arms against the Government of the United States; that while owning property in a loyal State or Territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

61 VI. That the said Harry T. Hays, the person who owns the said property, subsequently to said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as governor of a State, or as a member of a convention or legislature, or as judge of a court of one of the so-called Confederate States of America, after having held an office of trust or profit in the United States, or did hold an office or agency under the government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana, and that he did take an oath of allegiance to, or to support the constitution of the so-called Confederate States.

VII. That the said Harry T. Hays, the person who owns the said property, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not within sixty

62 days after public warning and proclamation, duly given and made by the President of the United States, on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, cease to aid, countenance, and abet such rebellion and return to his allegiance to the United States.

VIII. That the said Harry T. Hays, the person who owns the said property, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation, duly given and made on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

IX. That by reason of the premises, the property herein described and all the right, title, and interest and estate of the said person

63 or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against said property and the owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be therein named, to appear and answer this libel of information; and that order of publication may be made in the usual form, and that the court may grant such further and other relief as to law and justice may appertain and as this court is competent to give in the premises, and that after due proceedings had the said property may be condemned and forfeited to the United States of America, and he prays for general relief.

(Signed) RUFUS WAPLES,

U. S. District Attorney for the Eastern District of Louisiana.

Warrant.—Issued August 8th, 1863.

The President of the United States of America to the marshal
64 of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the real estate, a full description whereof is hereto annexed as part of this writ, fully described on pages 57, 58, and 59 of this transcript, together with all the improvements, buildings, privileges, and other hereditaments to the same belonging, and all the right, title, and interest of Harry T. Hays therein now libelled by the United States for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisana; that you do cite and admonish the owner or owners and all and every other person or persons having or pretending to have any right, title, or interest in or to the same to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said real estate should not be condemned and sold agre'ably to the prayer of the libellant; and how
65 you have executed this warrant that you make return according to law.

Witness the honorable Edward H. Durrell, judge of the said court, at New Orleans, this 8th day of August, 1863, and the 88th year of the Independence of the United States.

(Signed) ALFRED SHAW, *Clerk*,
By K. LOEW, *D'y Clk.*

Marshal's return.

Received August 8th, 1863, and in obedience to the within warrant seized and took into my possession the within described property, posted copies of libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in New Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863.

Returnable 31st August, 1863.

(Signed) JAS. GRAHAM,
U. S. Marshal.

66 *Order of publication.—Issued August 8th, 18—.*

United States district court, eastern district of Louisiana.

UNITED STATES *vs.* THREE LOTS OF GROUND, THE PROPERTY OF Harry T. Hays.	No. 7650.

Whereas certain three lots of ground situated in faubourg Lafayette, fourth district of this city, fully described in the libel by the district attorney, and now on file in this court, together with all the improvements, buildings, rights, privileges, appurtenances and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of Harry T. Hays therein has been seized by the marshal of the United States for the eastern district of Louisiana, by

virtue of an act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes"; and whereas the United States attorney for the eastern district of
67 Louisiana did, on the seventh day of August, A. D. 1863, file a libel of information in this court, praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information.

It is, therefore, on this eighth day of August, in the year of our Lord one thousand eight hundred and sixty-three, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the thirty-first day of August, and show cause, if any they have, why said property & real estate, and the right, title, and interest therein of said Harry T. Hays should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said
68 31st day of August, 1863, the first publication to be on or before the 11th instant.

(Signed) E. H. DURELL, *Judge.*

NEW ORLEANS, *Aug.* 8, 1863.

Default.—Minutes of 1st September, 1863.

UNITED STATES
vs.
THREE LOTS OF GROUND, THE PROPERTY OF Harry T. Hays. } No. 7650.

The delay allowed by law having expired herein and no claim or defence having been filed, after due monition and proclamation, on motion of the dist. att'y, it is ordered that all persons interested in the property herein seized be pronounced in contumacy and default, and the libel adjudged and taken pro confesso.

Intervention of E. A. Bradford.—Filed Nov'r 27th, 1863.

THE UNITED STATES
vs.
69 3 LOTS OF GROUND, THE PROPERTY of Harry T. Hays. } No. 7650.

To the honorable E. H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The petition of intervention of E. A. Bradford, a citizen of the United States and of the State of Louisiana, formerly a resident of the city of New Orleans, but who for some years past has resided in Europe, and who is now residing at Pau, in the Empire of France, respectfully shows:

First. That a libel has been filed in this honorable court in the suit entitled The United States *vs.* Harry T. Hays, No. 7650, praying for

the confiscation to the United States of the following described property, viz: Three lots of ground situated in the fourth district of this city, in the square bounded by Chestnut, Camp, First, and Philip streets, designated as lots Nos. 25, 26, and 27, on a plan drawn by B. Buisson, on the 18th June, 1852, and deposited in the office of J. Agaisse, notary; said lots adjoin each other and measure each 30 feet front on Chestnut street between Philip and First streets, by 159 feet 11 inches and 10 lines in depth between parallel lines, which three lots of
70 ground above described were and are the property of Henry T. Hays, against whom a decree of confiscation is asked from this honorable court.

Second. The said Harry T. Hays is indebted to your petitioner in the sum of six thousand dollars, with interest at the rate of eight per centum per annum, from the 3d day of July, 1862, till paid; for this, that he is the holder and owner of a promissory note drawn by the said Harry T. Hays to his own order, and by him indorsed, for the sum of six thousand dollars ($6,000), dated July 3d, 1860, and payable two years after date, with interest at the rate of eight per centum per annum from maturity till paid, which, with interest thereon, remains due and unpaid.

Third. That said note for six thousand dollars, as before described, with the interest thereon as hereinbefore set forth, together with five per cent. on said principal sum with interest as attorney's fees, in the event of any litigation for its collection, are secured by a mortgage specially given for that purpose, whereby the said Hays, by an act passed before A. Commandeur, notary public in this city on the 3d day of July,
71 1860, specially mortgaged and hypothecated the property hereinbefore described, of which a decree of confiscation is prayed for in the libel to secure to any holder of said note the payment of the same with interest and charges as hereinbefore set forth, all of which will more fully appear by reference to said promissory note, hereto annexed and made part of this petition, and to the act of mortgage aforesaid, which will be produced on the trial of this intervention.

Fourth. That by reason of the premises, this petitioner has by law a special lien and privilege upon the property described in the libel prior and superior to that of the United States or that of any creditor or claimant upon either the property described or its proceeds for the payment of the amount of said note with the interest thereon and the charge of five per cent. for attorney's fees.

Wherefore petitioner prays, the premises being considered, that he may be allowed to file this his petition of intervention, and that if the property which has been libelled herein or any part thereof be subjected to
72 confiscation, of which your petitioner knows nothing, that your petitioner's rights may be recognized as superior to those of the United States, and that the property confiscated may be sold and the proceeds applied to the payment of your petitioner's claim with interest and charges as herein before set forth, and with all costs incurred in her behalf.

Petitioner prays that notice of this intervention may be given to Rufus Waples, esq., the counsel for the libellant, and district attorney of the United States, and that after due proceedings had the court will pronounce upon petitioner's demand as prayed for and grant such other and further relief and redress as to right and justice may appertain and as the court is competent to give in the premises.

And petitioner will ever pray.

(Signed) J. N. LEA,

Attorney in Fact and at Law for Intervenor.

James N. Lea, being duly sworn, doth depose and say that he
73 is the agent of Edward A. Bradford, esq., the petitioner in the foregoing intervention, who is absent from the State; that he is duly authorized to make this claim; that all the allegations in the foregoing petition are true, and that no other person except the said Edward A. Bradford has any interest in the claim set forth in this petition of intervention.

(Signed) J. N. LEA.

Sworn to and subscribed before me this 27 November, 1863.

(Signed) K. LOEW, *Dy Clk.*

Testimony before commissioner.—Filed May 5th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
THE LIBRARY OF HAYS & ADAMS. } 7675.

UNITED STATES
vs.
3 LOTS OF GROUND, THE PROPERTY OF HARRY T. } 7650.

Before Chas. Claiborne, U. S. comm'r.

APRIL 19th, 1864—5 o'clock p. m.

WM. P. NOBLE, a witness for libellants, duly sworn:

I reside in Dryades street, in the city of New Orleans; I know
74 Harry T. Hays; I saw him last in the Confederate army, about the 8th of October last—I am mistaken it was about the 8th of August last. He was on a visit to the camp of the Washington Artillery, near Orange Court-House, State of Virginia; he visited said camp in his capacity of a brigadier-general of the Confederate army. I have seen him frequently within the last two years. I have seen him on the march and in other places, in the line of battle first as colonel and afterwards as a brigadier-general of the rebel army. I recollect distinctly having seen him at the battle of Fredericksburg in his military capacity.

The time spoken of above I saw Mr. Harry T. Hays was subsequent to August, 1862.

(Signed) W. POPE NOBLE.

Sworn to and subscribed before me this 19th day of April, 1864.

[SEAL.] (Signed) CHAS. CLAIBORNE,
U. S. Comm'r.

Before Chas. Claiborne, U. S. comm'r.

THE UNITED STATES
vs.
THE LIBRARY OF HAYS & ADAMS. } No. 7675.

75 PATRICK CUNNINGHAM, a witness on the part of libellants, duly sworn, deposed:

I live at the corner of Franklin and Euphrosine streets, in the city of New Orleans. I have been in the rebel army, under General Dick Taylor. I have seen Harry Hays several times, first as colonel and

afterwards as brigadier-general. The last time I saw Harry Hays was at a place called Bristow Station, in Virginia, in August, 1862; he was then acting as brigadier-general of the rebel army.

(Signed) PATRICK CUNNINGHAM.

Sworn to and subscribed before me this 19th April, 1864.

[Seal.] (Signed) CH'S CLAIBORNE.
U. S. Commissioner.

Claim and intervention of George Cook.—Filed May 14th, 1864.

United States district court, eastern district of Louisiana.

THE UNITED STATES
vs.
THREE LOTS OF GROUND, THE PROPERTY OF Harry T. Hays.

76 To the honorable Edward H. Durell, judge of the United States district court for the eastern district of Louisiana:

And now comes Geo. Cook, a free man of color, residing in New Orleans, parish of Orleans, State of Louisiana, intervening for his interest in the property of Harry T. Hays, and for answer to the libel of information of Rufus Waples, attorney, &c., against three lots of groundy, the property of Harry T. Hays, and for answer to the libel of information of Rufus Waples, attorney, &c., against three lots of ground, the property of said Harry T. Hays, alleges and articulately propounds as follows:

That on the 11th day of December, in the year 1860, said Harry T. Hays, then residing and doing business in said New Orleans, made his certain promissory note in the words and figures following:

Received, New Orleans, December 11th, 1860, from George Cook, colored, one thousand dollars, to be returned when called for, with interest at the rate of 10 per cent. per annum from this date.

HARRY T. HAYS.

77 That on said 11th day of *that on the said 11th day of* December, 1860, the said Harry T. Hays, for a valuable consideration, viz, one thousand dollars good and lawful money to him, said Hays, in hand then and there paid, delivered said note to said George Cook, intervenor, who is now the lawful holder and owner thereof; that no part of said note has been paid except the sum of three hundred dollars, which was paid on the 10th day of June, 1861, although the same long since became due and payment thereof has been demanded duly and repeatedly.

That there remains due to said George Cook, intervenor, from the said Harry T. Hays the sum of seven hundred dollars, with interest thereon at and after the rate of ten per cent. per annum, from the 11th day of December, 1860, and interest on the sum of three hundred dollars at and after the rate of ten per cent. per annum from the 11th day of December, 1860, to the 10th day of June, 1861.

Wherefore the said George Cook, intervenor, prays that he may be permitted to file his claim against the said Hays, and that after due
78 proceedings had a judgment may be rendered by this honorable court that he recover and have out of the proceeds and effects of

the property of the said Harry T. Hays, libelled herein, the amount of his said note, together with the interest on the same till date of judgment, and for all general and special relief.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Proctors for Claimant.

his
(Signed) GEO. + COOK.
mark

NEW ORLEANS, 14 *May*, 1864.

Sworn to before me this 14 day of May, 1864.
(Signed) K. LOEW, *Dy Clk.*

Exception to claim of Cook and E. A. Bradford.—Filed June 22d, 1864.

UNITED STATES
ads.
GEO. COOK & E. A. BRADFORD, INTERVENOR IN three lots of ground, property of Harry T. Hays. } No. 7650.

To the Hon. Edward H. Darell, judge of the district court of the United States for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who herein prosecutes for the
79 United States, in this behalf by protestation, not confessing or acknowledging all or any of the matters and things in said intervenor's bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

FIRST EXCEPTION.—For that said bill and petition of intervention shows that said claimant and intervenor is a resident of the State of Louisiana, which said State is in rebellion and open resistance to the Government of the United States.

SECOND EXCEPTION.—For that said bill and petition of said intervenor shows no specific lien on or interest in the specific property libelled in this cause.

THIRD EXCEPTION.—For that said intervenor by the said petition of intervention does not bring himself within the act of Congress of the United States entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," approved March 3d, 1863, and made a part of this exception.

FOURTH EXCEPTION.—For that said intervenor has not given
80 a stipulation with sureties to abide by the final decree in this cause to be rendered.

Wherefore, said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said b ll of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Answer to intervention of E. A. Bradford.—Filed June 22d, 1864.

UNITED STATES
vs.
E. A. BRADFORD, INTERVENOR IN THREE LOTS of ground, the property of Harry T. Hays. } No. 7650.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of America for the said eastern district of Louisiana, who prosecutes herein
81 for the United States in this behalf, to said bill of intervention exhibited by E. A. Bradford in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said bill of intervention of said E. A. Bradford, for answer thereto, or unto as much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering saith:

That this defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that the said Harry T. Hays is indebted to the said E. A. Bradford in the sum of six thousand dollars, as stated in said intervenor's bill of intervention.

Further answering, the said defendant, attorney as aforesaid expressly, denies any and all indebtedness whatever of said Hays to said intervenor, A. E. Bradford.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States, approved March 3d, 1863, and entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," that in all cases now or
82 hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts above mentioned, or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment out of the proceeds of such ship, vessel, or other property of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property under the laws of the United States or any loyal State thereof: Provided, That no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property: And provided, also, that This act shall extend to such claims only as might have been enforced specifi-
83 cally against such ship, vessel, or other property in any loyal State wherein such claim arose, the said intervenor, E. A. Bradford, is not entitled to any relief in this honorable court against the said property seized under said libel, and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause.

Without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or necessary for this defendant, attorney as aforesaid, to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, attorney as

aforesaid. All of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed with costs and charges in this behalf wrongfully sustained.

And as in duty bound will ever pray, &c.

(Signed) RUFUS WAPLES.
U. S. Att'y for Eastern District of La.

84 *Answer to intervention of George Cook.—Filed June 22d*, 1864.

UNITED STATES
vs.
GEO. COOK, INTERVENOR IN THREE LOTS OF ground, the property of Harry T. Hays.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney for the United States of America for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said bill of intervention exhibited by George Cook in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said bill of intervention of said George Cook, for answer thereto or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering saith:

That this defendant, attorney as aforesaid, in behalf as aforesaid,
85 expressly denies that the said intervenor, George Cook, is a loyal citizen of the United States.

And the said defendant, attorney as aforesaid, expressly denies that Harry T. Hays is indebted to said intervenor, Geo. Cook, in the sum of one thousand dollars, as is erroneously set forth in intervenor's bill of intervention.

Further answering, the said defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that Harry T. Hays is indebted to said intervenor, Geo. Cook, in any amount whatever.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States approved March 3d, 1863, and entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," that in all cases now or hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts above mentioned, or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property or the proceeds thereof to the United States or to any informer, first provide for the payment
86 out of the proceeds of such ship, vessel, or other property of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property, under the laws of the United States or of any loyal State thereof: Provided, That no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property: And provided, also, That this act shall

extend to such claims only as might have been enforced specifically against such ship, vessel, or other property in any loyal State wherein such claim arose, the said intervenor, George Cook, is not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause.

Without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or necessary for this defend-
87 ant, attorney as aforesaid, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, attorney as aforesaid. All of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed with costs and charges in this behalf wrongfully sustained.

And, as in duty bound, will ever pray, etc.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Intervention of the State of Louisiana.—Filed Aug. 31st, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES }
vs. }
HARRY T. HAYS. }

88 To the honorable E. H. Durell, judge of the district court of the United States in and for the eastern district of Louisiana:

The intervention of B. L. Lynch, the attorney-general of the State of Louisiana, herein intervenor in the sum of fifty-five dollars and ninety-seven cents, for this, to wit:

That in the year 1861 an assessment was duly and legally made by the State assessor of the State of Louisiana of all the property within the limits of the parish of Orleans; that the said assessment roll was duly adopted, after the delay required by law, and shows that the State tax of the said defendant amount to the sum of twenty-five dollars and sixty-five cents for said year; that in the year 1862 an assessment was made in manner and form as required by law by the said State assessor of all the property contained within the limits of said parish, and that the defendant herein stands assessed upon said assessment roll of the year 1862 for the sum of thirty dollars and thirty-two cents for property owned by him in the city of New Orleans during the latter year;
89 which two sums herein above referred to amount to fifty-five dollars and ninety-seven cents; all of which will more fully and at large appear from a certified copy of each of said assessment rolls and other evidence to be produced upon the trial of this cause.

That under and by virtue of an act of Congress approved July 16th, 1862, the proceedings in this cause must conform as nearly as may be to proceedings in admiralty or revenue cases, and that according to admiralty proceedings and jurisdiction ordinary or general creditors may claim the property or proceeds of property brought into registry and to be disposed of or distributed by the court.

That under and by virtue of the laws of the State of Louisiana the property seized and taken into possession of the marshal of the United

States was, at the time of such seizure and taking into possession, pledged to the State of Louisiana, in payment of her claims as one of his creditors.

That under and by virtue of the laws of the State of Louisiana, in such cases made and provided, intervenor has a lien and privilege upon the property seized by the marshal aforesaid, which lien or privilege is of a higher rank than any mortgage or other incumbrance whatever; that the said property, at the time of such seizure and previous thereto, was held and owned by said Harry T. Hays subject to and encumbered with a lien and privilege for the payment of intervenor's claim, amounting as aforesaid to fifty-five dollars and ninety-seven cents.

That at the time of filing libel or information, and at the time of the seizure aforesaid by the marshal, intervenor was entitled by the laws of Louisiana to enforce her claim and demand specifically against the property seized and taken as aforesaid into the hands of the United States marshal.

That all and singular the premises are true and within the jurisdiction of this court.

Wherefore intervenor prays that by an order of this honorable court she may be authorized to appear and prosecute this intervention, that due process of law, according to the course and practice of this court in like cases, may issue, and that Rufus Waples, esq., district attorney of the United States for said district, may be cited to appear and *and* answer all and singular the matters aforesaid, and that this honorable court would be pleased to declare, pronounce, and decree that the claim and demand of intervenor against the said Harry T. Hays, amounting to the sum of fifty-five dollars and ninety-seven cents, as herein above set forth, be allowed; that judgment for said claim be rendered in favor of intervenor, and against the said Harry T. Hays; that the lien and privilege aforesaid upon the lot of ground seized by the marshal herein be recognized and enforced for the payment of intervenor's aforesaid claim with her costs in this behalf expended.

That in the event of this court proceeding to render judgment of condemnation against said lot, then, that your honor, notwithstanding such condemnation and before awarding the aforesaid lot of ground or property, or the proceeds arising therefrom, to the United States, or to any inferior or inferiors, person or persons whatsoever, will first provide for the payment by such lot or its proceeds, if the same is sold at suit of government, of intervenor's claim and demand aforesaid, and that intervenor may have such other and further relief in the premises as in law and justice she may be entitled to receive, with her costs, &c.

(Signed) B. L. LYNCH.

(Signed) B. L. LYNCH,
Attorney-General, for Intervenor.

Sworn to and subscribed before me this 31 day of Aug., in the year of our Lord 1864.

(Signed) K. LOEW,
D'y Clk.

Decree condemning property, signed January 23d, 1865.

UNITED STATES
vs.
THREE LOTS OF GROUND, PROPERTY OF HARRY T. Hays.

This cause came up for trial, district attorney for libellant, J. N. Lea, esq., for intervenor, and the monition issued in this cause having
93 been heretofore returned, and the usual proclamation having been made and the default of all persons entered, it is thereupon, on motion of R. Waples, esq., U. S. dist. att'y, ordered, sentenced, and decreed by the court now here, and his honor the district judge by virtue of the power and authority in him vested doth hereby order, sentence, and decree that the three lots of ground, with the buildings and improvements thereon, property of Harry T. Hays, a full description whereof is contained in the libel of information on file in this cause, be and the same are hereby condemned as forfeited to the United States. And upon like motion it is further ordered and decreed that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on or before the 23d February, 1865, and that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenors being reserved for further action hereafter.

Judgment rendered January 18th, 1865.

Judgment signed January 23d, 1865.

(Signed) E. H. DURELL, *Judge.*

94 *Venditioni exponas.—Filed March 17th, 1865.*

United States district court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies:

Whereas, at a district court of the United States, holden at New Orleans, for and within said district, of the 18th day of January, A. D. 1865, three lots of ground, with the buildings and improvements thereon, fully described in the libel on file, property of Harry T. Hays, were, after proclamation and due proceedings had, decreed forfeit, and ordered to be sold at public auction: these are, therefore, to command you to sell to the highest bidder at public auction, at the Merchants' and Auctioneers' Exchange within said district, on the third day of March, 1865, at 12 o'clock m., the said three lots of ground, and first giving thirty days' notice at least of the time and place of sale by advertisement, on the 27 Jan., Feb. 9, 23, and 3 March, in one of the newspapers
95 printed at New Orleans, and by proclamation in the usual form on the day of sale; the money arising from the sale to be paid into the registry of the said court, on or before the 23d February, 1865, to be disposed of as the law in this case directs.

And make due return hereof, with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 23d day of January, A. D. 1865, and 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
Dy Clk.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

NEW ORLEANS, *March 16th*, 1865.

Pursuant to this precept I have caused the property within named to be sold by public auction, and to the highest bidder, at the Merchants' and Auctioneers' Exchange, on the day, hour, and place therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta newspaper, printed in the city of
96 New Orleans, and by the crier on the day of sale; and at such sale the purchasers were as under, viz: 3 lots of ground in the 4th district of this city, in the square bounden by Chestnut, Camp, First, and Phillip street, designated by the Nos. 25, 26, & 27 on a plan drawn by B. Buisson on 18th June, 1852, and deposited in the office of Jean Agaisse, notary; said lots adjoin each other, and measure each, American measure, 30 feet front on Chestnut street, between Philip and First streets, by 159 feet 11 inches and 10 lines deep, between parallel lines, together with all the buildings and improvements thereon, adjudicated to Rufus Waples, for the price and sum of $6,000.00.

Reference is also made to the certificate of the recorder of mortgages for the parish of Orleans, hereto annexed as part of this return.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records in this office there are no mortgages standing in the name of Harry T.
97 Hays and recorded against three lots of ground situate in faubourg Lafayette, fourth district of this city, in the square bounded by Chestnut, Camp, First, and Philip streets, designated by the Nos. 27, 26, 25, and measuring each 30 feet front, on Chestnut street, by 159 feet 11 inches and 10 lines in depth, than the following, to wit: 1st, B. 79 f. 132. The one by him granted in favor of Thomas G. Morgan to secure $6,000 and interest, as per act before A. Commandeur, notary, dated 3d July, 1860, and recorded the 4th November, 1863. 2d, B. P. 1 f. 370. The privilege in favor of the second draining district.

New Orleans, March 9, 1865.

(Signed) J. W. MADDEN,
Recorder.

[5 ct. int. rev. stamp attached & cancelled.]

Whereby the gross sales amounted to six thousand dollars, which I pay over to Chas. Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest:

(Signed) A. BADOUIN,
D'y Marshal.

98 Received from Cuthbert Bullitt, United States marshal, six thousand dollars, being (as he saith) the proceeds of the aforegoing sale, the monies to be disposed of as the court directs, and for which I have signed duplicate receipts.

[SEAL.] (Signed) K. LOEW, *D'y Clerk.*

NEW ORLEANS, *March 17th*, 1865.

Amended petition.—Filed February 23d, 1865.

To the honorable the judge of the district court of the United States in and for the eastern district of Louisiana:

The supplemental petition of Edward A. Bradford, a loyal citizen of the United States, residing in the Empire of France and absent from this city and State, respectfully shows: That he herewith files a copy of the act of mortgage, duly recorded, sued upon in his original petition on file, to which this is a supplement, viz: his petition of intervention in the proceeding entitled The United States *vs.* Three lots of ground, the property of Harry T. Hays, numbered 7,650 on the docket of
99 suits in this honorable court. He prays leave to file this his supplemental petition, and that with the copy of the act of mortgage hereto annexed it may be taken and deemed to be a part of the said original petition on file. That Rufus Waples, esq., the district att'y of the United States, may have notice of this his supplemental petition, and that judgment may be rendered in the premises as prayed for in the said original petition on file, and petitioner prays for all such other and further relief as to equity and right may appertain and the court is competent to grant.

And as in duty bound, &c.

(Signed) J. N. LEA,
Att'y in fact and at law of the intervenor.

J. N. LEA, being duly sworn, deposes that he is the agent of Edward A. Bradford, the intervenor in above entitled suit; that he is duly authorized to make this claim; that all the allegations in the said original and supplemental petitions contained are true, and that no
100 one has any interest in the claim therein set forth except the said E. A. Bradford, and that said E. A. Bradford is absent from the State of Louisiana.

(Signed) J. N. LEA.

Let this amended petition be filed.

Febr'y 23d, 1865.

(Signed) E. H. DURELL, *Judge.*

Judgment in favor of E. A. Bradford and dismissing claim of Geo. Cook, &c.—Extract from judgment book of February 23d, 1865.

UNITED STATES
vs.
THREE LOTS OF GROUND, THE PROPERTY OF Harry T. Hays. } No. 7650.

This cause came up for trial on the interventions (J. N. Lea for E. A. Bradford; Sullivan, Billings and Hughes, for Geo. Cook, not present; R. Waples, esq., U. S. att'y, app'g for libellants), when, after hearing the pleadings, evidence, and argument, the court being satisfied that the intervenor, E. A. Bradford, has fully made out his case, it is or-
101 dered, adjudged, and decreed that there be judgment in his favor for the sum of six thousand dollars and 5 % att'y fees with 8 % int. thereon from 3d July, 1862, till paid, with special mortgage upon the three lots of ground with all the buildings and improvements thereon designated as lots Nos. 25, 26, & 27 of square bounded by Chestnut, Camp, First and Philip, more fully described in the libel and act of mortgage on file.

It is further ordered that the intervention of George Cook being an ordinary claim without any lien upon the libelled property be rejected with costs.

It is further ordered that the taxes due the State of L'a and city of New Orleans be paid out of the proceeds, and that the costs and charges be taxed according to law, the intervenor, Bradford, paying his share of the same.

Judgment rendered Feb'ry 23d, 1865.

Judgment signed Feb'ry 28th, 1865.

(Signed) E. H. DURELL, *Judge.*

102 PROCEEDINGS IN U. S. CIRCUIT COURT, DISTRICT OF LOUISIANA.

Hearing and verdict.—Extract from minutes. November Term, 1878.

NEW ORLEANS, *Thursday, January 30th*, 1879.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

Mrs. E. C. HAYS, TUTRIX,
vs
RUFUS WAPLES.

This case was called for trial, (Percy Roberts and Singleton and Brown for plaintiff—defendant neither present nor represented) when the following jurors were called and sworn to try the issue:

1. E. Blessy.
2. Geo. Dean.
3. V. Aime.
4. R. Sheppard.
5. T. J. M. Clark.
6. Jas. Miltenberger.
7. C. J. Dakin.
8. F. F. Trinchard.
9. H. M. Verlander.
10. J. Burroughs.
11. A. F. Tewalen.
12. James Nott.

And the jury being complete, James Nott was appointed fore-
103 man, and the trial proceeded; and, after hearing the pleadings and the evidence, the cause was submitted to the jury, who returned the following verdict, to wit:

We, the jury, find verdict in favor of the plaintiff, declaring her minor children mentioned in the petition to be the true owners of the property described in the said petition, and that Mrs. E. C. Hays, as tutrix of said minor children, is entitled to the possession of the same.

Jan. 30th, 1879.

JAMES NOTT, *Foreman.*

Whereupon it was ordered that the verdict be recorded.

Order, verdict set aside.—Extract from the minutes of January 31st, 1879.

Mrs. E. C. HAYS, TUTRIX,
vs.
RUFUS WAPLES. No. 8466.

By consent of counsel for plaintiff and defendant, here present in open court, it is ordered by the court that the verdict and judgment herein be set aside, and that the cause be assigned for trial de novo on 17th February, 1879, at 11 a. m.

104 *Note of evidence.—Filed February 17th, 1879.*

HAYS
vs. } 8466.
WAPLES.

Pl'ff offered act of sale A (transcribed on page 41 of this transcript). Objected to; objection overruled.

Pl'ff offered certificate of conveyance B (page 104 of this transcript); certificate of death C (page 52 of this transcript); letters of tutorship D (page 54 of this transcript).

Def't offered record 7650, dist. court (page 56 of this transcript); marshal's deed and certificate (page 105 of this transcript).

Certificate of Conveyance B, offered by plaintiff February 17, 1879.

STATE OF LOUISIANA, *Parish of Orleans:*

OFFICE OF REGISTER OF CONVEYANCES,
New Orleans, February 17th, 1879.

The undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, hereby certifies that according to the
105 records of this office it does appear that M has alienated the following property, to wit: Three lots of ground situated in the 4th dist. of this city, designated by Nos. 25, 26, & 27 on a plan made by B. Buisson, dated June 18th, 1852, deposited in office of J. Agaisse, notary, said lots being in square bounded by Chestnut, Camp, First and Philip streets, adjoining each other, and measuring each in American measure 30′ on Chestnut st. front, between Philip and First sts., by a depth between parallel lines of 159′ 11″ 10‴, together with all the buildings and improvements thereon, stood in the name of Harry T. Hays on the 3d day of March, 1865.

(Signed) D. B. PENN, *R. C.* [SEAL.]

Marshal's deed and certificate offered by defendant February 17, 1879.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas I, Cuthbert Bullitt, marshal of the United States for the eastern district of Louisiana, under and by virtue of a writ of
106 venditioni exponas to me directed by the honorable the district court of the United States for the district aforesaid in the suit entitled "United States versus Three Lots of Ground, the property of Harry T. Hays," No. 7650 of the docket of said court, did expose at public sale, according to law and after all the previous legal requisites had been fulfilled and complied with, and having given full thirty days' notice of said sale in the True Delta, a daily newspaper printed and published in the city of New Orleans, viz, on the 27 January, the 9th and 23d of February, and the 3d of March, 1865, the following described property, viz: Three certain lots of ground in the fourth district of the city of New Orleans, designated by the Nos. 25, 26, and 27 on a plan drawn by B. Buisson, dated 18th June, 1852, and deposited in the office of Jean Agaisse, a notary of said city; said lots are located in the square bounded by Chestnut, Camp, First, and Philip streets, and adjoin each other, and measure each, American measure, 30 feet front on Chestnut street between Philip and First streets, by a depth be-

tween parallel lines of 159 feet 11 inches and 10 lines, together with all the buildings and improvements thereon. On Friday, the 3d day of March, in the year one thousand eight hundred and sixty-five, at the hour of (12) twelve o'clock at noon, at the merchants' and auctioneers' exchange, No. 18 Royal street, in the second district of the city of New Orleans, when, after making due proclamation of said sale, and duly crying the said property, the same was adjudicated to Rufus Waples, of the said city of New Orleans, he being the last and highest bidder thereon, for the price and sum of six thousand dollars in cash, which said sum I hereby acknowledge to have received in ready current money of the United States of America.

And it appears from a duly certified copy from the records in the office of the recorder of mortgages for the parish of Orleans, which certificate is annexed to and made part of the return on the writ of venditioni exponas under which the above property has been sold, that there are no other mortgages recorded against the said property than
108 the one in 1st B 79, folio 132, in favor of Thomas G. Morgan, to secure the payment of $6,000, with interest, as per act before A. Commandeur, notary, dated 3d July, 1860, and recorded 4th November, 1863, and the one on 2 B P, folio 370, being the privilege in favor of the second draining district.

Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises, and by virtue of the laws in such case made and provided, and under the authority of the acts of Congress of August 6th, 1861, July 17th, 1862, and March 3d, 1863, in relation to confiscation, do hereby sell, transfer, assign, and set over unto the said Rufus Waples, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements, rights, ways, titles, hereditaments, and appurtenances thereunto belonging or in any wise appertaining as aforesaid.

To have and to hold the said above-described property, with all the buildings, improvements, rights, ways, &c., as aforesaid, unto the said Rufus Waples, his heirs, and their proper use, benefit, and behoof, forever.

109 In testimony whereof I grant these presents under my signature as U. S. marshal aforesaid, in the said city of New Orleans, on this 16th day of March, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States of America the eighty-ninth.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

[6 dollars int. revenue stamps annexed and cancelled.]

Executed in presence of—
(Signed) J. J. PRIES.
(Signed) A. BOISBLANC.

United States district court, eastern district of Louisiana, city of New Orleans.

I hereby certify that the foregoing deed of sale has this day been duly recorded in this office in book B, folio 44 & 45.

Clerk's Office, March 17th, A. D. 1865.

[SEAL.] (Signed) W. S. BENEDICT, *D'y Clk.*

I, register of conveyances, certify that the within deed has been this day recorded in my office in book 88, folio 539.

New Orleans, June 20th, 1865.

(Signed) FELIX McCULLOCH, *Reg'r.*

110 I, the undersigned recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certify that the following mortgage recording against Harry T. Hays, viz, B. 79, p. 132—the one in favor of Thomas G. Morgan to secure the payment of $6,000 with interest, as per act before A. Commandeur, notary, 3d July, 1860, recorded 4th November, 1863—has been this day cancelled and annulled on the books of my office, viz, B. 79, p. 132, but so far only as it affect the hereinafter described property, to wit: Three lots of ground and a fraction of a lot, with all the buildings and improvements, situate in the 4th district in the square bounded by Chestnut, First, Camp, and Philip streets, and designated by the Nos. 25, 26, and 27, adjoining each other, and measure each 30 feet front on said Chestnut st. bet. Philip and First streets, 159, 11, 10 in depth; the said fraction of a lot measures 9, 6, 3 front on said Chestnut st. by an irregular depth.

New Orleans, March 27th, 1865.

(Signed) J. W. MADDEN,
Recorder.

111 *Hearing and verdict.—Extract from the minutes of February* 17, 1879.

MRS. E. C. HAYS, TUTRIX, *vs.* RUFUS WAPLES. } No. 8466.

This cause came on for trial (Percy Roberts and Singleton and Browne for plaintiff, Hornor and Benedict for defendant), when the following jurors were called and sworn to try the issue:

1. A. Prados, jr.
2. Jules Lanabere.
3. Morris Dyer.
4. E. L. Howell.
5. James Doran.
6. Joseph Baryon.
7. James Goodwyn.
8. Joseph Thezan.
9. H. C. Bartlette.
10. Michael P. Creagh.
11. Charles Guerineau.
12. Leon Sincino.

And the jury being complete, the court appointed A. Prados, jr., foreman thereof, and the trial proceeded, and after hearing the pleadings and the evidence, and receiving a charge from the court, the cause was submitted to the jury, who returned the following verdict, to wit:

We, the jury, find that the minor children of Harry T. Hays named in the petition are the true owners of the property described
112 in said petition, and that Mrs. Elizabeth C. Hays, as tutrix, is entitled to the possession of the same.

Feb'ry 17th, 1879.

(Signed) A. PRADOS, Jr.,
Foreman.

Whereupon it was ordered that the verdict be recorded.

Rule for new trial.—Entered and Filed Feb'ry 20, 1879.

U. S. Circuit Court.

MRS. E. C. HAYS ET ALS. *vs.* RUFUS WAPLES. } No. 8466.

On motion of Hornor & Benedict, atty's of defendant, it is ordered by the court that plff. show cause on Saturday, the 1st day of March, A. D. 1879, at 10 o'clock a. m., why a new trial should not be granted herein, on following grounds:

1st. That the judgment is contrary to law and the evidence.

2d. That the court erred in charging the jury, 1st, that nothing was confiscated or sold except the life estate of Harry T. Hays, and that upon his death his property descended to his heirs; 2d, that this would be true though the jury found that Bradford held a mortgage
113 upon the property and intervened in the confiscation case and was paid the amount of his mortgage, either wholly or in part; 3d, that if the jury found that the property, at the time of the confiscation, was the property in fee of said Hays, that he died prior to the institution of this suit, and that the plffs. are his heirs at law, then the verdict of the jury must be for the plffs.

3d. That the court erred in refusing the charges to the jury asked for by counsel for defendant.

Bill of Exception No. One for Def't.—Filed February 22d, 1879.

United States circuit court, district of Louisiana.

MRS. E. C. HAYS ET ALS. *vs.* RUFUS WAPLES. } No. 8466.

Be it remembered that on the trial of this case, in open court, on Monday, the 17th day of February, 1879, the counsel for plaintiffs offered in evidence the act of David Hadden to Harry T. Hays, of certain real estate, therein described, before Poole, notary, dated 3d May, 1854, to which the counsel of defendant objected on the grounds
114 following:

First. That the title is not sufficiently set forth in the petition, nor is it attached to the petition as required by the code of practice, art. 174, (altho' the petition recites that it is attached, it had not been when issue was joined and the case transferred), and because the petition does not describe the land sued for (C. P., 173.)

Second. That Harry T. Hays having conveyed by mortgage (importing confession of judgment) the right to sell to th eamount of $6,000, with interest, &c., and the mortgaged having been foreclosed as authorized by act of Congress, and the property having been exhausted to satisfy the mortgage, no title remained in Hays or his heirs.

Third. That pl'ffs claim property alleged to have been condemned in "the district court of Louisiana," whereas at the time alleged there was no such court in this State, but only a "district court for the eastern district of Louisiana."

Fourth. That the pl'ffs claim property in his petition alleged to have been forfeited to the United States.

Fifth. That p'l'ffs sue upon an extinguished title.

But the court overruled these objections, and ordered the evi-
115 dence to be received; when the counsel for defendant then and there excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same, and make it a part of the record in this case after due exhibition to counsel for plaintiffs.

(Signed) P. R., *Att'y for Pl'ff.*

Which is done accordingly.

(Signed) EDWARD C. BILLINGS,
Judge.

Bill of exceptions No. two for def't.—Filed February 22d, 1879.

United States circuit court, district of La.

MRS. E. C. HAYS ET ALS. *vs.* RUFUS WAPLES. } No. 8466.

Be it remembered that on the trial of this case in open court on Monday, the 17th day of February, 1879, the counsel for defendant having so requested, the court charged the jury as follows:

1st. That all the right, title, and interest of Harry T. Hays in the property claimed for his heirs was forfeited to the United States.

116 2d. That the United States acquired, however, subject to the mortgage of Bradford, just as Hays had held.

3d. That mortgage is a species of alienation, it is an alienation of a right on the property.

Whereupon counsel for defendant asked the court to give the jury the following additional charges:

4th. That Bradford could, under the statute expressly authorizing it, intervene before the confiscation sale, and lose no rights thereby, and was entitled to have the property sold in fee, since the mortgaged debt covered the whole assessed value of the property.

5th. That the United States, like an ordinary seizing creditor, was bound to exhaust the property in order to pay the mortgagee, the latter not being allowed to issue executions but obliged to look to the proceeds for the satisfaction of the mortgage.

6th. That the sale of the property to satisfy the judgment of Bradford, decreeing his claim to be superior to that of the United States,

117 having proved insufficient to pay the mortgage, nothing was left in the United States to be conveyed by grant to the heirs of Hays.

7th. That the heirs of Hays could not take by descent, since their father conveyed the property in 1860 to the amount of $6,000, which proved to be the full value, by mortgage, importing confession of judgment, upon which subsequent judgment has been rendered and sale made and deed given; also, because they aver in their petition that all their father's interest had been conveyed by forfeiture.

8th. That plaintiffs cannot take both the land and the price, their father having received the full value in the $6,000 borrowed from Bradford.

9. That Bradford's intervention as authorized by the statute of March 3d, 1863 (12 Stat. at Large, 762), was an hypothecary action, a real action whether the property mortgaged was in the hands of the mort-

gagor or of any third person, or of the United States, and the possessor must pay the debt or give up the property.

118 10. That one who pays a mortgage debt in a judicial proceeding has a right to be subrogated to the rights of the holder of that debt, and is so subrogated by such payment, and if Waples' money was used to pay Bradford's mortgage he, Waples, became subrogated to the rights of Bradford.

But the court refused to give said additional charges numbered from 4 to 10 inclusive to the jury, whereupon counsel for the defendant then and there excepted to the ruling of the court refusing said charges and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case after due exhibition to counsel for plaintiffs.

(Signed) P. R., *Att'y for Pl'ff.*

Which is done accordingly.

(Signed) EDWARD C. BILLINGS.
Judge.

Bill of exceptions No. three for Def't.—Filed January 22d, 1879.

United States circuit court, district of Louisiana.

MRS. E. C. HAYS ET ALS. *vs.* RUFUS WAPLES. } No. 8466.

Be it remembered that on the trial of this case in open court
119 on Monday, the 17th of February, 1879, the court charged the jury, among other things, "that at the proceeding for and sale of the confiscated property of Harry T. Hays nothing was confiscated or sold except the life estate of Harry T. Hays, and upon his death the property descended to his heirs"; "that this would be true though the jury found that Mr. Bradford held a mortgage upon the property and intervened in the confiscation case and was paid the amount of his mortgage, either wholly or in part"; "that if the jury find that the property at the time of the confis'ation was the property in fee of the said Harry T. Hays, that he died prior to the institution of this suit, and that the plaintiffs are his heirs at law, then the verdict of the jury must be for the plaintiffs."

To all of which counsel for the defendant then and there excepted as being erroneous and contrary to the law, and tendered this bill of exceptions, praying the court to sign the same, and make it a part of the record in this case, after due exhibition to counsel for plaintiffs.

120 (Signed) P. R., *Att'y for Pl'ff.*

Which is done accordingly.

(Signed) EDWARD C. BILLINGS,
Judge.

Submission of rule for new trial.—Extract from minutes of March 8th, 1879

MRS. E. C. HAYS, TUTRIX, *vs.* RUFUS WAPLES. } No. 8466.

The rule for a new trial was called and submitted by counsel for defendant on brief to be furnished within one day.

Order, new trial refused.—Extract from minutes of March 10th, 1879.

MRS. E. C. HAYS, TUTRIX, vs. RUFUS WAPLES. } No. 8466.

The court, perceiving no reason to disturb the verdict and judgment in this cause, ordered that the motion for a new trial be overruled.

121 *Judgment.—Extract from judgment book, November term, 1878.*

NEW ORLEANS, *Monday, February 17th*, 1879.

Court met pursuant to adjournment.

Present, Hon. Edward C. Billings, district judge.

MRS. ELIZABETH C. HAYS, TUTRIX, vs. RUFUS WAPLES. } No. 8466.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that the minor children of Harry T. Hays, Lucy Hays, Kate Hays, and Minerva Hays, herein represented by their mother and duly confirmed tutrix, Mrs. Elizabeth C. Hays, widow of the said Harry T. Hays, be and they are hereby recognized as the lawful owners of the hereinafter described property, and that said tutrix is entitled to the enjoyment and possession of the same, namely: Three lots and a fraction of ground with all the buildings and improvements thereon, rights, ways, privileges, servitudes, and appurtenances thereunto belonging or in any wise appertaining, situated
122 in Fauborg Lafayette, fourth district of this city, in the square bounded by Chestnut, First, Camp, and Philip streets, and designated by the Nos. (25) twenty-five, (26) twenty-six, and (27) twenty-seven on a plan drawn by B. Buisson on the 18th June, 1852, and deposited in the office of Jean Agaisse, a notary public in this city; the said lots adjoin each other and measure each (30 feet) thirty feet front on Chestnut street between Philip and First streets by (159) one hundred and fifty-nine feet (11) eleven inches and (10) lines in depth between parallel lines, American measure, and the said fraction measures (9) feet (6) six inches and (3) three lines front on said Chestnut street adjoining said lot No. 27 towards First street by a depth the same as said lot according to a surveyor's sketch by Blanchard, dated 27 January, 1853, annexed to an act of sale passed before Wm. L. Poole, notary, on 4th June, 1853.

The whole of the above described property was acquired by said Harry T. Hays from David Hadden by act before Wm. L. Poole, notary, on the 3d May, 1854.

123 It is further ordered and decreed that the defendant, Rufus Waples, do forthwith surrender into the hands of the said tutrix the hereinabove described property, and that she be put in possession thereof.

And it is further ordered that said defendant pay costs of suit.

Judgment rendered February 17th, 1879.

Judgment signed March 11th, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

Petition for writ of error & order.—Filed March 14th, 1879.

United States circuit court, district of Louisiana.

MRS. E. C. HAYS, TUTRIX, &C., *vs.* RUFUS WAPLES. } No. 8466.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana.

The petition of Rufus Waples, defendant herein, with respect represents: That he is aggrieved by the final judgment rendered against him in the case of Mrs. E. C. Hays, tutrix, etc., vs. this petitioner, defendant therein, No. 8466, on the docket of this honorable court on the 17th February, 1879, and signed on the 11th March, 1879.

124 Wherefore petitioner prays that he may be allowed a writ of error to the Supreme Court of the United States at Washington City, returnable into said Supreme Court at its next session, to be holden on the second Monday of October in the year 1879, and that said writ may operate as a supersedeas on petitioner executing and filing a bond with good and sufficient surety in the sum of two hundred and fifty dollars, and that the said plaintiff, Mrs. Elizabeth C. Hays, natural tutrix of her minor children, John Hays, Lucy Hays, Kate Hays, and Minerva Hays, be cited to appear in said Supreme Court of the United States on the second Monday in October, 1879, to answer to the said writ of error, and he prays for all general relief.

(Signed) HORNOR & BENEDICT, *Att'ys.*

Order.

A writ of error to operate as a supersedeas is allowed in this case as prayed for, and according to law returnable to the Supreme Court of the United States on the second Monday of October, 1879, the

125 petitioner going bond in the sum of two hundred and fifty dollars, with good and solvent security, and conditioned as the law directs.

New Orleans, March, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

N. O., *March* 13, '79.

Service of this petition accepted and citation waived.

(Signed) PERCY ROBERTS, *Att'y for Pl'ff.*

Bond for writ of error.—Filed March 14th, 1879.

Know all men by these presents that we, Rufus Waples, as principal, and Joseph P. Hornor, as surety, are held and firmly bound unto Mrs. Elizabeth C. Hays, natural tutrix of her minor children, John Hays, Lucy Hays, Kate Hays, and Minerva Hays, in the full and just sum of two hundred and fifty dollars, to be paid to the said Mrs. Elizabeth C. Hays, natural tutrix, &c., her certain attorney, executors, administrators, or assignees, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and sev-

126 erally, by these presents. Sealed with our seals, and dated this

12th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Mrs. Elizabeth C. Hays, natural tutrix, &c., is plaintiff, and Rufus Waples is defendant, judgment was rendered against the said Rufus Waples, defendant, and the said Rufus Waples having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Mrs. Elizabeth C. Hays, natural tutrix, &c., citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Rufus Waples shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

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(Signed) RUFUS WAPLES,
By HORNOR & BENEDICT, *Att'y.* [L. S.]
(Signed) JOSEPH P. HORNOR. [L. S.]

Bond approved.
(Signed) PERCY ROBERTS,
Att'y for Pl'ff.

Approved.
(Signed) EDWARD C. BILLINGS,
Judge.

128 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 127 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Mrs. E. C. Hays, tutrix versus Rufus Waples, No. 8466 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 26th day of June, A. D. 1879.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 26th day of June, A. D. 1879.

EDWARD C. BILLINGS, *Judge.*

129 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Mrs. Elizabeth C. Hays, natural tutrix of her minor children John Hays, Lucy Hays, Kate Hays, and Minerva Hays, against Rufus Waples, a manifest error hath happened, to the great damage of the said Rufus Waples as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 8466. Rufus Waples, pl'ff in error, versus Mrs. E. C. Hays, tutrix, &c. Writ of error. Hornor & Benedict, law offices, 16 Carondelet st. Filed March 14, 1879. F. B. Vinot, d'y cl'k.

(Indorsement on cover:) No. 574. Rufus Waples, plaintiff in error, vs. Mrs. Elizabeth C. Hays, natural tutrix of her minor children John Hays, Lucy Hays, Kate Hays, and Minerva Hays. Louisiana C. C. U. S. Filed 10th October, 1879.

ADDITION TO RECORD. No. 313.

Supreme Court of the United States, October term, 1881.

RUFUS WAPLES, PLAINTIFF IN ERROR,
vs.
MRS. ELIZABETH C. HAYS, NATURAL TUTRIX, &c. } No. 313.

Certiorari and return.—Filed November 9, 1881.

1 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the district of Louisiana, greeting:

Whereas in a certain suit in said circuit court between Mrs. Elizabeth C. Hays, natural tutrix of her minor children, John Hays, Lucy Hays, Kate Hays, and Minerva Hays, plaintiff, and Rufus Waples, defendant, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"First. The judgment of the U. S. district court on the intervention of E. A. Bradford, March 27, 1865, ordering him to be paid out of the proceeds of the marshal's sale $4,986.93.

"Second. The receipt of E. A. Bradford's attorney for said moneys to the clerk of court, dated March 31, 1865.

"Third. The State and city tax-receipts or any one of them showing the assessment of the property in dispute at $6,000."

2 You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-fourth day of October, A. D. 1881.

JAMES H. MCKENNEY,
Clerk Supreme Court U. S.

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States, fifth circuit, eastern district of Louisiana.

To the honorable the Supreme Court of the United States:

In obedience to the command in the foregoing writ of certiorari of the said Supreme Court, and after duly searching the record and proceedings in the cause wherein Mrs. Elizabeth C. Hays, natural tutrix of her minor children, John Hays, Lucy Hays, Kate Hays, and Minerva Hays, is plaintiff, and Rufus Waples is defendant, No. 8466 of the docket of said circuit court, we find the following omissions, as stated in the said writ, to wit:

3 First. The judgment of the United States district court, eastern district of Louisiana, March 27th, 1865, on the intervention of E. A. Bradford, in the suit of the United States vs. Three Lots of Ground, property of Harry T. Hays, ordering him to be paid out of the proceeds of the marshal's sale, $4,986.93.

Second. The receipt of E. A. Bradford's attorney to the clerk of the district court, for said moneys, dated March 31, 1865.

Third. The State tax-receipts for the years 1861, 1862, and 1863, the city tax-receipt for the year 1864, and the United States direct tax assessment showing the assessment of the property in dispute at $6,000. All of which are hereto annexed and certified as commanded.

As witness the hand of the honorable Don A. Pardee, United States circuit judge, one of the judges of the said circuit court, this 4th day of November, A. D. 1881.

DON A. PARDEE,
U. S. Circuit Judge.

[SEAL.] Attest:

F. A. WOOLFLEY,
Clerk U. S. Circuit Court, Eastern District of Louisiana.

4 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, eastern district of Louisiana.

No. 8466.

MRS. E. C. HAYS, TUTRIX,
versus
RUFUS WAPLES.

Judgment of the United States district court, eastern district of Louisiana, March 27th, 1865, on the intervention of E. A. Bradford, in the suit of the United States vs. Three Lots of Ground, property of Harry T. Hays.—Offered in evidence on behalf of plaintiff, Jan'y 30, 1879, and omitted in making the transcript of record to the Supreme Court of the United States.

District court of the United States of America, for the district of Louisiana, holding sessions in the city of New Orleans, February term, A. D. 1865. New Orleans, Monday the 27 day of March, 1865.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, judge.

UNITED STATES
vs.
THREE LOTS OF GROUND, PROPERTY OF HARRY T. HAYS. } No. 7650.

5 The marshal having returned the writ of venditioni exponas, showing that the gross proceeds of the libelled property are.... $6,000 00

It is ordered, adjudged, and decreed that after deducting the costs and charges heretofore taxed and allowed, amounting to $532 11

The U. S. direct tax	9 04	
State tax, 1861	25 65	
State tax, 1862	30 32	
State tax, 1863	17 50	
City tax, 1861 and int	121 28	
" " 1862 " "	74 81	
" " 1863 " "	68 51	
" " 1864 " "	90	
Clerk's fees 6th dist. court	21 60	
Sh'ff's fees " " "	6	
Drainage tax	16 25	1,013 07
The balance of		4,986 93

be paid over to E. A. Bradford, intervenor, in part satisfaction of his judgment and mortgage for $6,000 upon the property of the defendant libelled and sold in this case.

Receipt of E. A. Bradford's attorney, March 31, 1865, for net proceeds of sale.—Offered in evidence on behalf of plaintiff, Jan'y 30th, 1879, and omitted in making the transcript of record to the Supreme Court of the United States.

6 UNITED STATES
vs.
THE PROPERTY OF H. T. HAYS. } No. 7650.

Received, New Orleans, March 31, 1865, of C. Claiborne, esq., the sum of four thousand nine hundred and eighty-six $\frac{93}{100}$ dollars, being the nett proceeds of the property sold in this case after deduction of costs, charges, and taxes.

$4,986.93.

(Sig.) J. N. LEA,
Att'y for C. A. Bradford.

U. S. district court for the eastern district of Louisiana.

CLERK'S OFFICE.

I certify that the within two pages do contain a true copy of the decree of distribution made by the court, on 27th March, 1865, in the case of the U. S. vs. 3 Lots of Ground, property of Harry T. Hays, No. 7650 of the docket, and of the receipt to Charles Claiborne, late clerk, from the party entitled to the proceeds.

October 31, 1881.

(Signed) JOHN DEVONSHIRE, *Clerk*,
Per K. LOEW, *D'y Clerk.*

(Endorsed:) U. S. district court, east. district of Louisiana. No. 7650. United States vs. Three Lots of Ground, property of Harry T. Hays. Copy of decree & receipt.

7 *State tax receipt, 1861.—Filed February 24th, 1865, offered in evidence on behalf of plaintiff Jan'y 30, 1879, and omitted in making transcript of record to the Supreme Court of the United States.*

No. 1889.

THE STATE OF LOUISIANA,
Fourth District, City of New Orleans:

Received of Harry T. Hays the sum of twenty-five $\frac{65}{100}$ dollars, State

tax for the year 1861, on the property designated on the other side, in conformity to law.

New Orleans, , 186 .

Collector.

(Endorsed:) 4 slaves, 2450. Chestnut, 98 + 160, 6,000.

State tax receipt, 1862.—*Filed February 24th*, 1865, *offered in evidence on behalf of plaintiff Jan'y* 30, 1879, *and omitted in making the transcript of record to the Supreme Court of the United States.*

No. 1312.

THE STATE OF LOUISIANA,
Fourth District, City of New Orleans:

Received of Harry T. Hays the sum of thirty $\frac{32}{100}$ dollars, State tax for the year 1862 on the property designated on the other side, in conformity to law.

New Orleans, , 186 .

$30.] *Collector.*

(Endorsed:) Slaves, $4,050. Chestnut, 98 + 160, 6,000—$1,050.

8 *State tax receipt* 1863.—*Filed February 24th*, 1865; *offered in evidence on behalf of plaintiff Jan'y* 30, 1879, *and omitted in making the transcript of record to the Supreme Court of the United States.*

No. 1869.

THE STATE OF LOUISIANA,
Fourth District, City of New Orleans:

Received of Harry T. Hays the sum of seventeen $\frac{50}{100}$ dollars, State tax for the year 1863 on the property designated on the other side, in conformity to law.

New Orleans, 186 .

$17.50.)

Collector.

(Endorsed:) No. of square, 169 Chestnut, 98 + 160, $6,000.

City tax receipt 1864.—*Filed Feb'ry* 24, 1865, *offered in evidence on behalf of plaintiff, Jan'y* 30, 1879, *and omitted in making the transcript of record to the Supreme Court of the United States.*

No. 3439.

CITY OF NEW ORLEANS.

Received of M. Henry T. Hays the sum of ninety dollars for taxes of 1864.

Real estate	$6,000
Total taxable property	$6,000

City tax on real estate	30 00
" " " personal property	
Consolidated loan tax on real estate	45 00
Railroad tax on total taxable property	15 00
	$90 00

New Orleans, March 1, 1865.

(Signed) JOHN S. WALTON,
Treasurer.

(Signed) S. HOWELL, *Controller.*

9 (Endorsed:) 4 district, square 169, Camp, Chestnut First, & Philip, 98×160, 6,000.

United States direct-tax assessment, M'ch 24, 1865; *offered in evidence on behalf of plaintiff Jan'y* 30, 1879, *and omitted in making the transcipt of record to the Supreme Court of the United States.*

UNITED STATES DIRECT TAX COMMISSIONERS,
New Orleans, March 24, 1865.

To the hon. the dist. court of the U. S., eastern dist. of La.:

We respectfully certify that the following taxes have been assessed by us under an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," approved June 7, 1862, viz:

Owner: Henry T. Hays.

Square: No. 169, bounded by Camp, Chestnut, 1st, & Philip st., on Chestnut st.; valuation, $6,000; tax, $9.04.

Lot: Feet, $98^{3} \times 159^{11\ 10}$.

Respectfully submitted.

E. M. RANDALL,
Chr. Direct Tax Com'rs for La.

10 CLERK'S OFFICE, *ss:*

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing seven pages contain and form true and correct copies of the judgment of the United States district court on the intervention of E. A. Bradford, the receipt of E. A. Bradford's attorney for net proceeds of sale, State tax receipts for the years 1861, 1862, and 1863, city tax receipt for 1864, and United States direct tax assessment, which were offered in evidence on behalf of plaintiff January 30, 1879, and omitted in making the transcript of record to the Supreme Court of the United States in the foregoing numbered and entitled cause.

Witness my hand and seal of said court, at the city of New Orleans, this 3d day of November, A. D. 1881.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

(Endorsed:) Supreme Court U. S., 1881. October term, No. 313. Rufus Waples, pl'ff in error, vs. Mrs. Elizabeth C. Hays, natural tutrix, &c. Writ of certiorari and return. Filed 9th November, 1881.

FILED
APR 17 1882
JAMES H. McKENNEY, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1881. NO. 313.

In Error to the Circuit Court of the United States for the District of Louisiana.

RUFUS WAPLES, PLAINTIFF IN ERROR,
vs.
MRS. ELIZABETH C. HAYS, NATURAL TUTRIX OF HER MINOR CHILDREN, JOHN HAYS, LUCY HAYS, KATE HAYS AND MINERVA HAYS.

Brief of Plaintiff in Error.